UNITED STATES PATENT AND TRADEMARK OFFICE

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10/020,701	12/12/2001	Wah Yiu Kwong	ITL.0681US (P12999)	9547

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EXAMINER
BAUM, RONALD

ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS,
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _09 February 2009_.

2a)☐ This action is FINAL.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1,3-11 and 13-20_ is/are pending in the application.

　　4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1, 3-11 and 13-20_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

　　Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

　　Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

　　a)☐ All   b)☐ Some * c)☐ None of:

　　　1.☐ Certified copies of the priority documents have been received.

　　　2.☐ Certified copies of the priority documents have been received in Application No. _____.

　　　3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
　　　　　application from the International Bureau (PCT Rule 17.2(a)).

　　* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
　　Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
　　Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This action is in reply to applicant's correspondence of 09 February 2009.

2.   Claims 1, 3-11 and 13-20 are pending for examination.

3.   Claims 1, 3-11 and 13-20 remain rejected.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in

37 CFR 1.17(e), was filed in this application after final rejection. Since this application is

eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e)

has been timely paid, the finality of the previous Office action has been withdrawn pursuant to

37 CFR 1.114. Applicant's submission and comments filed on 09 February 2009 has been

entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if
> the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would
> have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1, 3-11 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Clough et al, U.S. Patent No. 5,379,057 and further in view of Ultimaco Safeware AG, 'SafeGuard

Easy', Ultimaco Safeware AG, 08/2000, entire document,

http://web.archive.org/web/20000301132302/www.utimaco.de/english/index1.htm ('Ultimaco').

It is noted that Clough et al, does not disclose the specific use of a pre-boot
authentication/security application per se as an installable application to perform the fundamental
computer access control functions insofar as security/system use authorization for multiple users
is concerned. However, the examiner asserts that it would have been obvious to one ordinary
skill in the art at the time the invention was made for a portable computer system of Clough et al
to require controlled access by users, especially in the case of a portable (i.e., legitimately or
illegitimately removable for access thereof), via the installation of the Ultimaco 'SafeGuard Easy'
pre operating system access control application.

Such motivation to combine would be obvious in light of the Ultimaco inventive concept
is clearly directed to at least a standard system/PC product environment (i.e., MS Windows ™),
where standard system/PC products that are portable and used by multiple users/applications
would clearly required controlled access to the system resources (i.e., the Ultimaco 'SafeGuard
Easy' encrypts/secures the hard drive for subsequent decryption/access during the operating
system boot process).

A recitation directed to the manner in which a claimed apparatus is intended to be used
does not distinguish the claimed apparatus from the prior art if prior art has the capability to do
so (See MPEP 2114 and Ex Parte Masham, 2 USPQ2d 1647 (1987)).

Prior Art's Broad Disclosure vs. Preferred Embodiments

As concerning the scope of applicability of cited references used in any art rejections
below, as per MPEP § 2123, subsection R.5. Rejection Over Prior Art's Broad Disclosure
Instead of Preferred Embodiments:

I. PATENTS ARE RELEVANT AS PRIOR ART FOR ALL THEY CONTAIN "The use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain." In re Heck, 699 F.2d 1331, 1332-33, 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting In re Lemelson, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). A reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill the art, including nonpreferred embodiments. Merck & Co. v. Biocraft Laboratories, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir.), cert. denied, 493 U.S. 975 (1989). See also > Upsher-Smith Labs. v. Pamlab, LLC, 412 F.3d 1319, 1323, 75 USPQ2d 1213, 1215 (Fed. Cir. 2005)(reference disclosing optional inclusion of a particular component teaches compositions that both do and do not contain that component);< Celeritas Technologies Ltd. v. Rockwell International Corp., 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir. 1998) (The court held that the prior art anticipated the claims even though it taught away from the claimed invention.). >See also MPEP § 2131.05 and § 2145, subsection X.D., which discuss prior art that teaches away from the claimed invention in the context of anticipation and obviousness, respectively.<

II. NONPREFERRED AND ALTERNATIVE EMBODIMENTS CONSTITUTE PRIOR ART
Disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). "A known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use." In re Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994). Furthermore, "[t]he prior art's mere disclosure of more than one alternative does not constitute a teaching away from any of these alternatives because such disclosure does not criticize, discredit, or otherwise discourage the solution claimed…." In re Fulton, 391 F.3d 1195, 1201, 73 USPQ2d 1141, 1146 (Fed. Cir. 2004).

Clough et al *generally* teaches and suggests (i.e., Abstract, figures 1-14 and associated descriptions in general) the limitations set forth in the claims below.

5.   As per claim 1; "A method comprising:

receiving a password through

a graphical user interface [*figures 1-5 and accompanying descriptions, col. 1,lines 59-col. 4,line 3, whereas the portable integrated computer system with associated touch screen, software configurable keyboard, optional memory configurations, installable applications (e.g., downloadable or external memory transferable) etc., comprising a microprocessor based controller and associated integrated peripheral logic/circuitry (e.g., video graphic components) generates the Ultimaco 'SafeGuard Easy' GUI that controls the user authentication process (i.e., ' receiving a password through … '), insofar as the associated bootable controlling software/operating system is powered up, encompassing the claimed limitations, as broadly interpreted by the examiner.*];

after receiving said password,

comparing said password to

stored information using

a graphic controller [*figures 1-5 and accompanying descriptions,*

col. 1,lines 59-col. 4,line 3, whereas the portable integrated computer

system with associated touch screen, software configurable keyboard,

optional memory configurations, installable applications, etc., comprising

a microprocessor based controller and associated integrated peripheral

logic/circuitry (e.g., video graphic components ' a graphic controller ')

generates the Ultimaco 'SafeGuard Easy' GUI that controls the (pre-boot)

user authentication process (i.e., ' receiving ... comparing ... said

password ... stored information using ... graphic controller '), insofar as

the associated bootable controlling software/operating system is powered

up, encompassing the claimed limitations, as broadly interpreted by the

examiner.]; and

booting an operating system after

comparing said password to

stored information [*figures 1-5 and accompanying descriptions, col.*

1,lines 59-col. 4,line 3, whereas the system Ultimaco 'SafeGuard Easy' controls

the user authentication process (i.e., ' booting ... after comparing ... '), insofar as

the associated bootable controlling software/operating system is subsequently

booted, encompassing the claimed limitations, as broadly interpreted by the

examiner.].".

Further, as per claim 11, this claim is the embodied method software for the method

claim 1 above, and is rejected for the same reasons provided for the claim 1 rejection.

6.   Claim 3 *additionally* recites the limitation that; "The method of claim 1 including

        generating said graphical user interface

                using said graphics controller.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and

accompanying descriptions, col. 1,lines 59-col. 4,line 3, whereas the system touch screen,

associated integrated peripheral logic/circuitry (e.g., video graphic components encompassing

the 'graphics controller' as an integrated component (i.e., on the main circuit board)) generates

the Ultimaco 'SafeGuard Easy' GUI that controls the user authentication process, insofar as the

associated bootable controlling software/operating system is powered up, encompassing the

claimed limitations, as broadly interpreted by the examiner.).

Further, as per claim 13, this claim is the embodied method software for the method

claim 3 above, and is rejected for the same reasons provided for the claim 3 rejection.

7.   Claim 4 *additionally recites* the limitation that; "The method of claim 3 including

        storing information for

                generating said graphical user interface on

                        an option memory.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and accompanying descriptions, col. 1,lines 59-col. 4,line 3, whereas the system touch screen, associated integrated peripheral logic/circuitry (e.g., video graphic components encompassing the 'graphics controller' as an integrated component (i.e., on the main circuit board)) generates the Ultimaco 'SafeGuard Easy' GUI that controls the user authentication process, insofar as the integrated associated memory (e.g., system RAM, graphic controller registers and associated memory, etc.,) and peripheral memory (e.g., floppy, RAM sticks, memory cards, etc.,), encompasses the claimed limitations, as broadly interpreted by the examiner.).

Further, as per claim 14, this claim is the embodied method software for the method claim 4 above, and is rejected for the same reasons provided for the claim 4 rejection.

8.   Claim 5 *additionally recites* the limitation that; "The method of claim 3 including
        using boot code running on a graphics controller to
                generate the graphical user interface.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and accompanying descriptions, col. 1,lines 59-col. 4,line 3, whereas the system touch screen, associated integrated peripheral logic/circuitry (e.g., video graphic components encompassing the 'graphics controller' as an integrated component (i.e., on the main circuit board)) generates the Ultimaco 'SafeGuard Easy' GUI that controls the user authentication process, insofar as the video graphic components, main circuit board with associated processor/program memory that

controls the video graphic components, encompasses the claimed limitations, as broadly

interpreted by the examiner.).

Further, as per claim 15, this claim is the embodied method software for the method

claim 5 above, and is rejected for the same reasons provided for the claim 5 rejection.

9.   Claim 6 *additionally recites* the limitation that; "The method of claim 3 wherein

        generating a graphical user interface includes

                generating a graphical user interface to

                        enable the user to input said password.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and

accompanying descriptions, col. 1,lines 59-col. 4,line 3, whereas the system touch screen,

associated integrated peripheral logic/circuitry generates the Ultimaco 'SafeGuard Easy' GUI that

controls the user authentication process (' generating a graphical user interface … user to input a

password …'), encompassing the claimed limitations, as broadly interpreted by the examiner.).

Further, as per claim 16, this claim is the embodied method software for the method

claim 6 above, and is rejected for the same reasons provided for the claim 6 rejection.

10.   Claim 7 *additionally recites* the limitation that; "The method of claim 6 wherein

        generating a graphical user interface includes

                generating an on-screen keyboard.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and

accompanying descriptions, col. 1,lines 59-col. 4,line 3, and more particularly col. 2,lines 15-23,

53-63, whereas the system touch screen, associated integrated peripheral logic/circuitry generates

the Ultimaco 'SafeGuard Easy' GUI that controls the user authentication process (' generating a

graphical user interface ... generating an on-screen keyboard '), encompassing the claimed

limitations, as broadly interpreted by the examiner.).

Further, as per claim 17, this claim is the embodied method software for the method

claim 7 above, and is rejected for the same reasons provided for the claim 7 rejection.

11.   Claim 8 *additionally recites* the limitation that; "The method of claim 1 including

receiving inputs from the user

through the graphical user interface

without a keyboard.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and

accompanying descriptions, col. 1,lines 59-col. 4,line 3, and more particularly col. 2,lines 15-23,

53-63, whereas the system touch screen, associated integrated peripheral logic/circuitry generates

the Ultimaco 'SafeGuard Easy' GUI that controls the user authentication process (' receiving

inputs from the user ... without a keyboard '), encompassing the claimed limitations, as broadly

interpreted by the examiner.).

Further, as per claim 18, this claim is the embodied method software for the method

claim 8 above, and is rejected for the same reasons provided for the claim 8 rejection;

12.   Claim 9 *additionally recites* the limitation that; "The method of claim 1 including

       authenticating a user and

       allowing the operating system to boot if

              the user has been authenticated.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and

accompanying descriptions, col. 1,lines 59-col. 4,line 3, whereas the system Ultimaco

'SafeGuard Easy' controls the user authentication process ('… authenticating a user …'), insofar

as the associated bootable controlling software/operating system is subsequently booted ('…

allowing the operating system to boot if …'), encompassing the claimed limitations, as broadly

interpreted by the examiner.).

Further, as per claim 19, this claim is the embodied method software for the method

claim 9 above, and is rejected for the same reasons provided for the claim 9 rejection.

13.   Claim 10 *additionally recites* the limitation that; "The method of claim 9 including

       receiving a password entered

              without a keyboard

                     using the graphical user interface.".

The teachings of Clough et al are directed towards such limitations (i.e., figures 1-5 and accompanying descriptions, col. 1,lines 59-col. 4,line 3, and more particularly col. 2,lines 15-23, 53-63, whereas the system touch screen, associated integrated peripheral logic/circuitry generates the Ultimaco 'SafeGuard Easy' GUI that controls the user authentication process (' receiving a password entered ... without a keyboard ... using the graphical user interface '), encompassing the claimed limitations, as broadly interpreted by the examiner.).

Further, as per claim 20, this claim is the embodied method software for the method claim 10 above, and is rejected for the same reasons provided for the claim 10 rejection.

Response to Amendment

14.   As per applicant's argument concerning the lack of the various teachings by Clough et al and Ultimaco, dealing with the graphics controller actually performing the comparison, the examiner has fully considered in this response to amendment; the arguments, and finds them not to be persuasive.

At the very least, the claim language does not mention that the comparison is performed by the graphic controller; just that the graphic controller is a part of the comparison aspect (i.e., the graphical user interface is clearly used for ' receiving a password thru a graphical user interface '), as *broadly interpreted by the examiner*, and would therefore be applicable in the rejection, such that the rejection support references collectively encompass the said claim limitations in their entirety.

Conclusion

15.   Any inquiry concerning this communication or earlier communications from examiner

should be directed to Ronald Baum, whose telephone number is (571) 272-3861, and whose

unofficial Fax number is (571) 273-3861 and unofficial email is Ronald.baum@uspto.gov. The

examiner can normally be reached Monday through Thursday from 8:00 AM to 5:30 PM.

        If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kambiz Zand, can be reached at (571) 272-3811. The Fax number for the

organization where this application is assigned is **571-273-8300**.

        Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. For more information for

unpublished applications is available through Private PAIR only. For more information about the

PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

                                        Ronald Baum

                                        Patent Examiner

                                        /R. B./

                                        Examiner, Art Unit 2439

                                        /Kambiz Zand/

                                        Supervisory Patent Examiner, Art Unit 2434